

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

DEVIN NELSON, individually and on behalf
of similarly situated individuals,
Plaintiffs,

-v-

ALMEGA CABLE, INC. and
THOMAS KURIEN,
Defendants

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Civil No. 4:09-CV-349-Y

ORDER ENTERING DEFAULT AND GRANTING CLASS CERTIFICATION AND
JUDICIAL NOTICE

On this date came to be considered Plaintiffs' Motion for Default and Motion for Class Certification and Judicial Notice (document 9). Defendants were served with process on October 16, 2009, as indicated by the affidavit of service filed on November 2, and their answers were due on November 5. As of the date of this order, Defendants have failed to answer or otherwise respond to the complaint or to the motion for default. After review of the motion, the Court concludes that it should be and is hereby GRANTED, in that:

(1) the clerk of the Court shall issue an entry of default against defendants Almega Cable, Inc., and Thomas Kurien this same day;

(2) conditional class certification is GRANTED under "the two-stage certification process," *Ryan v. Staff Care, Inc.*, 497 F. Supp. 2d 820, 824 (N.D. Tex. 2007) (Fish, J.), applicable to Fair Labor Standards Act cases, 29 U.S.C. § 201, *et seq.*;

(3) the conditionally certified class shall consist of Defendants' employees who: (a) performed the duties of a field technician; (b) worked more than forty hours in a workweek in the past three

year period; and (c) were not paid one and one-half times their regular rate of pay for those hours worked in excess of forty;

(4) Plaintiff may transmit the proposed notice and claim form, as edited by the Court, to potential opt-in plaintiffs;¹

(5) within thirty (30) days of receipt of this order, Defendants shall produce to Plaintiffs' counsel the names and last-known addresses of all field technicians who performed work for Defendants during the period beginning three years before the date of this order through the present; and

(6) Plaintiffs shall serve a copy of this order on Defendants at their Bedford, Texas, business address and shall also mail copies to them via regular and certified mail, return receipt requested. Within five days after completion of such service, Plaintiffs shall file a certificate of service with the Court.

SIGNED February 5, 2010.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

¹The proposed notice shall be amended as follows prior to transmittal to potential opt-in plaintiffs:

- (1) Paragraph one, line one: the words "field technical" shall be changed to "field technician;"
- (2) Paragraph one, last line: the word "employee" shall be changed to "employees;"
- (3) Paragraph two, line two: the word "consent" shall be changed to "Consent Form;"
- (4) Paragraph three, first two lines: the words "the Named Plaintiff" shall be changed to "Nelson;"
- (5) Paragraph three, line two: the words "means that you must be able to answer yes to" shall be changed to "will depend upon your answer to;"
- (6) Paragraph four, line one: the words "and are allowed" shall be inserted between "choose to" and "join this suit;"
- (7) Paragraph four, line four: "Plaintiff's" shall be changed to "Plaintiffs'."

Additionally, specific dates shall be added for the bracketed material in the proposed notice.